IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 20315 of 2000(R)

PETITIONER:

SRI. GOPALAN RAJENDRAN, ANISH BHAVAN, KOMALAM, VADAMOM P.O., ANCHAL, KERALA.

BY ADV. SRI.WILSON URMESE

RESPONDENTS:

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1. THE ASST. COMMISSIONER OF INCOME TAX, INVESTIGATION CIRCLE, KOLLAM.

2. THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

3. THE TAX RECOVERY OFFICER, KOLLAM.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 34015 0F2000 IN OP 20315 OF 2000

DISMISSED.

13.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE RELEVANT EXTRACT (PAGE 32) OF THE PASSPORT OF THE PETITIONER ISSUED ON 29.12.90

EXT.P2 TRUE COPY OF THE ASSESSMENT ORDER DATED 14.11.96 ISSUED TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE ASSESSMENT ORDER DATED 28.4.97 ISSUED BY THE FIRST RESPONDENT.

EXT.P4 TRUE COPY OF THE LETTER DATED 7.2.2000 SENT TO DY. COMMISSIONER OF INCOME TAX, INVESTIGATION CIRCLE, KOLLAM.

EXT.P5 TRUE COPY OF THE LETTER DATED 29.3.2000 SENT BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P6 TRUE COPY OF ORDER OF THE THIRD RESPONDENT TO THE PETITIONER DATED 11.10.99

EXT.P7 TRUE COPY OF THE LETTER DATED 28.3.2000 SENT BY PETITIONER TO THIRD RESPONDENT.

EXT.P8 TRUE COPY OF THE LETTER DATED 5.5.2000 SENT BY THE THIRD RESPONDENT TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 20315 OF 2000

Dated this the 13th day of November, 2007

JUDGMENT

Petitioner is challenging block assessment made as a protective assessment against the petitioner . Regular assessment of same income is made in the name of Rafiq Abdul Ahamed who has contested the assessment unsuccessfully in appeals and the matter is now pending before the Supreme Court. Petitioner, as of now, has no grievance. This O.P. is filed in 2000 and for the last 7 years department has not proceeded with recovery against the petitioner because recovery is pursued based on regular assessment confirmed in the name of Sri. Rafiq Abdul Ahamed. However, department has issued prohibitory orders against sale of petitioner's property which is in the form of attachment vide Ext.P6. Petitioner will have grievance only if tax demanded is recovered from the petitioner. As of now there is no proposal to recover the tax from the petitioner. However, there is no need to keep the O.P. pending any longer in this Court. In the circumstances, O.P. is closed leaving freedom to the petitioner to file

fresh O.P. if recovery is initiated or pursued against the petitioner. So far as attachment is concerned, petitioner has no case that petitioner wants to sell the property or encumber the property. If the petitioner wants to sell or encumber the property petitioner will approach the department for lifting the attachment and the same will be considered by the department subject to such reasonable terms which the respondents can fix. More over if the appeal filed against regular assessment is decided by the Supreme Court in favour of the department, then department can lift the attachment and revoke the proceedings against the petitioner.

(C.N. RAMACHANDRAN NAIR)
Judge